

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
Television Wisconsin, Inc.)	
)	
Petition for Exemption)	CG Docket No. 06-181
)	CGB-CC-0360
To: Office of the Secretary		
ECFS		

**REPLY OF TELEVISION WISCONSIN, INC. TO
OPPOSITION TO PETITION FOR EXEMPTION
FROM CLOSED CAPTIONING REQUIREMENTS**

Television Wisconsin, Inc. (“Television Wisconsin”), licensee of Station WISC-TV, by counsel, submits this Reply to the Opposition to the Petition for Exemption from Closed Captioning Requirements filed by several Commenters.¹ On December 30, 2005, Television Wisconsin filed its Petition for Exemption pursuant to Section 79.1(f) of the Commission’s rules to request a three-year exemption from the closed captioning rules for a local sports program it produces called “Sidelines.”² As shown below, the Opposition must be dismissed as procedurally and substantively defective, despite the Commenters’ laudable support of the rights of the deaf and hard of hearing.

Background

Section 79.1(f) provides that a “video programming provider, video programming

¹ CGB-CC-0360, Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by Television Wisconsin Inc., CG Docket No. 06-181, filed March 26, 2007 (“Opposition”) The Opposition states that it is filed on behalf of the following commenters: Telecommunications for the Deaf and Hard of Hearing, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., American Association of People with Disabilities, and California Coalition of Agencies serving the Deaf and Hard of Hearing (collectively, the “Commenters”).

² Television Wisconsin, Inc. Petition for Exemption from Closed Captioning Requirements filed December 30, 2005 (“Petition for Exemption”).

producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements.” The Commission will grant petitions upon a showing that “compliance with the requirements to closed caption video programming would cause an undue burden [defined as significant difficulty or expense].”

As shown in the December 30, 2005 Petition for Exemption and as supported in the attached Affidavit,³ Television Wisconsin is an FCC-licensed broadcaster, a CBS affiliate in Madison, Wisconsin and the producer of “Sidelines.” Television Wisconsin operates WISC-TV, WISC-DT and a multicast MyNetworkTV channel using a portion of the WISC-DT spectrum. Television Wisconsin produces the “Sidelines” program and broadcasts it over these channels, and a third-party broadcaster carries the program on station WMLW-LP in Milwaukee. As the Petition for Exemption discusses, the “Sidelines” program is a weekly 30 minute sports-talk program with a panel of local sports writers and broadcasters. Discussion centers on items of local sports interest, including coverage of the University of Wisconsin, local high school teams and other sports teams in Wisconsin. The Petition for Exemption demonstrated that a requirement to caption “Sidelines” would impose an undue burden under the four-factor test of Section 79.1(f).

On March 26, 2007, the Commenters filed the Opposition. The Opposition only directly addresses the Petition for Exemption in the following language:

Operates and program aired on WISC-TV, WISC-DT, and a multicast UPS channel. Program also aired on WMLW-LP. Weekly ½ hour local sports talk program. Requests exemption for 3 years. Estimates CC costs \$80 per program or \$4,160 per year. Cost \$23,320 per year to produce and generates revenues of about \$2,756. Claims if required to CC, would cease production. Cash-flow positive, but reinvested or used to support other commonly owned stations. Includes statement of program costs/revenues; and affidavit.

³ See attached Affidavit of Thomas A. Bier, Vice President and General Manager of WISC-TV.

The Opposition must be dismissed or stricken as procedurally and substantively defective. First, while Section 79.1(f)(6) provides that any “interested person” may file comments or oppositions to a petition for exemption, in fact, the Commenters are not “interested persons” entitled to consideration of the Opposition. The Commenters fail to allege that any individual member would be directly injured by the grant of the Petition for Exemption. There is no indication that any individual member watches the program or resides in the service area where the programming is available.⁴ For these reasons, any alleged concerns are simply hypothetical. The Opposition should be dismissed for failure to demonstrate that it is filed by an “interested person” for purposes of Section 79.1(f)(9).

Second, Section 79.1(f)(9) provides that “[a]ll petitions and responsive pleadings shall contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on.”⁵ The Opposition fails to provide the required “detailed, full showing” that captioning the Sidelines program would not cause an “undue burden” under Section 79.1. The Opposition recites uncontested facts set forth in the Petition for Exemption in fewer than 80 words. The Opposition is curiously devoid of any legal analysis of these facts. By merely offering conclusory statements that the Petition for Exemption does not demonstrate an undue burden and by failing to connect the governing facts to the applicable standard, the Opposition is fatally defective.

At bottom, the “Sidelines” program is locally produced and distributed non-news programming with at best limited repeat value. While the program is rebroadcast multiple times

⁴ To the extent that an “interested person” is a “party in interest,” the Commission has held that petitioners must demonstrate that they reside in the broadcaster’s service area; otherwise, they fail to demonstrate “party-in-interest” status and accordingly, organizational standing does not lie for a membership organization to which the petitioner belongs. *Maumee Valley Broadcasting, Inc. For Renewal of Licenses of Stations WONW(AM)/WZOM-FM Defiance, Ohio*, 12 FCC Rcd 3487, Memorandum Opinion and Order (1997).

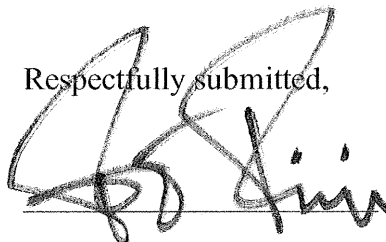
⁵ 47 C.F.R. § 79.1(f)(9).

during a broadcast week, its long-term value is limited. The program shares some characteristics of locally produced non-news programming without repeat value – namely that the programming is “not remunerative in itself” and that there is “significant risk” that mandated closed captioning would cause Television Wisconsin to terminate the Sidelines program.⁶ The Opposition utterly fails to rebut this showing, in favor of unsubstantiated allegations and conclusory remarks.

Conclusion

As set forth above, the Opposition must be dismissed as procedurally and substantively deficient. The Commenters fail to allege that they are “interested persons” within the meaning of Section 79.1 of the Commission’s rules. In addition, the Opposition comprises merely unsupported and conclusory allegations, far short of the “detailed, full showing” required under the Commission’s rules. In fact, the Petition for Exemption demonstrates sufficient facts to qualify for exemption from the closed captioning rules for the “Sidelines” program. For these reasons, the Opposition must be dismissed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rini', is written over a horizontal line.

Robert J. Rini
Jonathan E. Allen
Rini Coran, PC
1615 L Street, Suite 1325
Washington, DC 20036
202-296-2007
Counsel to Television Wisconsin, Inc.

May 4, 2007

⁶ See *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 10094 (CGB, 2006) (granting petitions for exemption of two video programming owners, citing the petitioners’ nonprofit status and the fact that the subject programming is “not remunerative in itself”), *recon. pending*. While Television Wisconsin is a commercial entity, the Bureau’s core concerns in *Anglers for Christ* are present here, particularly because the captioning requirement would hinder the production and distribution of local programming.

AFFIDAVIT

I, Thomas Bier, under oath, hereby state that I have reviewed the attached Reply of Television Wisconsin, Inc. to Opposition to Petition for Exemption from Closed Captioning Requirements. I declare under the penalty of perjury that the foregoing is true and correct.

The affiant further says not.

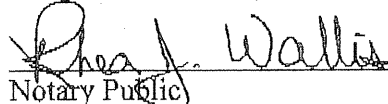


Thomas Bier
Vice President and General Manager
Television Wisconsin, Inc.

STATE OF WISCONSIN

COUNTY OF Dane

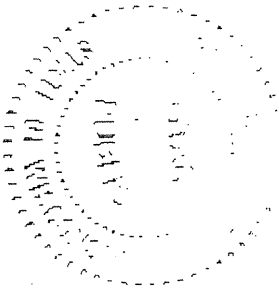
On this 4 day of May, 2007, personally appeared before me, the above named Thomas Bier, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing instrument to be his free act and deed, before me.



Notary Public

Print Name Rhea J. Wallis

My Commission expires: August 23, 2009



Certificate of Service

I, Kenn Wolin, a legal assistant with the law office of Rini Coran, PC, hereby certify that on this 4th day of May, 2007, I caused a copy of the foregoing Reply of Television Wisconsin, Inc. to Opposition to Petition For Exemption From Closed Captioning Requirements (CGB-CC-0360) to be delivered by First-class United States mail to the following:

Paul O. Gagnier
Troy F. Tanner
Danielle C. Burt
Bingham McCutchen, LLP
2020 K Street, N.W.
Washington, DC 20007
Counsel to Telecommunications For the Deaf
and Hard of Hearing, Inc.

Claude L. Stout, Executive Director
Telecommunications For the Deaf and Hard of
Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910

Nancy J. Bloch, Chief Executive Officer
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910-4500

Cheryl Heppner, Vice Chair
Deaf and Hard of Hearing
Consumer Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030

Brenda Battat, Assoc. Exec. Director
Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814

Edgar Palmer, President
Association of Late-Deafened Adults, Inc.
8038 Macintosh Lane
Rockford, IL 61107

Jenifer Simpson, Senior Director -
Telecommunications and Technology Policy
American Association of
People with Disabilities
1629 K Street, NW, Suite 503
Washington, DC 20006

Ed Kelly, Chair
California Coalition of Agencies
Serving the Deaf and Hard of Hearing
6022 Cerritos Avenue
Cypress, CA 90630


Kenn Wolin